

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6994 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

G S R T C

Versus

MAGANBHAI G PATEL

Appearance:

MR YS LAKHANI for Petitioner

MR HK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 29/10/96

ORAL JUDGEMENT

Rule. Service of rule is waived by learned advocate Mr Rathod for the respondent.

In this petition, the petitioner Corporation has questioned the legality and validity of the award of the Labour Court in Reference No.(LCS) No.315/90 whereby the petitioner came to be reinstated with continuity of

service and with 75 per cent of the backwages.

The respondent workman was departmentally dealt with in domestic inquiry on the charge of remaining absent for long without proper procedure. His services came to be terminated which on a reference came to be quashed by the Labour Court by award dated 25.1.96.

The respondent, a conductor of the petitioner Corporation contended that he had to go on long leave on medical ground as he was suffering from tuberculosis. There was also a transfer order whereby the respondent came to be transferred from Surat to Surandranagar and the respondent workman was relieved on 15.5.86 with a specific direction to report at the transferred station. He also did not report for duty. Thereafter in the domestic inquiry, his delinquency was held proved and he came to be dismissed from service.

The Labour Court exercising its discretionary power under section 11-A of the Industrial Disputes Act, 1947 (ID Act) on appreciation of the facts and circumstances quashed and set aside the order of dismissal recorded against the respondent and considering the nature of delinquency while passing the order of reinstatement granted 75 per cent of the backwages. The learned counsel for the petitioner Corporation has contended that the Labour Court has not imposed any punishment for the delinquency proved against the respondent. The Labour Court has recorded in its award that the reduction or deduction of 25 per cent of backwages would suffice and would meet the ends of justice in so far as punishment for the delinquency is concerned.

It appears from the record which was tendered by the learned counsel appearing for the parties in the course of submissions that the respondent workman has put in more than 12 years of service as a conductor and he committed misconduct in not following the required procedure for remaining on prolonged leave and not reporting for duty at the transferred station. However, the Courts are always obliged to address itself to the question whether the sentence or penalty is commensurate with the gravity of the delinquency? It appears from the record that on account of serious disease of tuberculosis, the workman remained on prolonged leave and he could not report to the transferred station after the order of transfer came to be passed. There is no evidence on record to show that that the respondent workman was gainfully employed during the period of dismissal. It appears from the record that the penalty

of withholding of 25 per cent of backwages is not sufficient and adequate in proportion to the delinquency proved against the respondent. Therefore, taking into account all the relevant facts and circumstances and the relevant proposition of law, the ends of justice will be satisfied if the penalty of stoppage of three increments with cumulative effect and future effect is awarded additionally to the respondent workman. This Court is unable to agree with the submission of the learned counsel for the petitioner Corporation that backwages to the extent of 75 per cent is also unjust and unreasonable. Since there is no evidence that the respondent workman was gainfully employed and again he was suffering from disease of tuberculosis and considering the facts and circumstances of the case, the exercise of discretion under section 11-A of the ID Act by the competent Labour Court for that cannot be said to be perverse, unjust or unreasonable requiring interference of this Court in a petition under Article 227 of the Constitution of India wherein the jurisdictional parameters are very much limited.

In the result, the petition is partly allowed. Penalty of stoppage of three increments with cumulative and future effect is imposed on the respondent workman. Rest of the impugned order is not disturbed. Rule is made absolute to the aforesaid extent with no order as to costs.

In view of the facts and circumstances and long pendency of the dispute which has been going on since almost for a spell of a decade, the petitioner Corporation is directed to comply with the award as early as possible preferably within two months. The respondent workman is directed to deposit 50 per cent of the amount initially in fixed deposit receipt in the name of the respondent workman in any bank or Unit Scheme or in any other scheme of his choice where yielding of interest rate is higher, for a period of at least one year and he will be entitled to the interest periodically which shall accrue therefrom. Remaining amount shall be paid by the Corporation by account payee cheque in the name of the respondent workman. He will not be entitled to create any encumbrance on the fixed deposit receipt. However, in case of any difficulty, on justified grounds it will be open for the respondent workmen to move the competent Labour Court for disbursement of the amount out of the fixed deposit receipt before maturity.

Direct service.

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